

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROBERT KELLER,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Civil Action H-06-1494
	§	
AT&T, INC. AND SOUTHWESTERN BELL	§	
YELLOW PAGES, INC.,	§	
<i>Defendants.</i>	§	

ORDER

This employment dispute is before the court on defendant AT&T, Inc.’s motion to compel deposition testimony (Dkt. 29).¹ Having considered the parties’ submissions and the law, the court grants AT&T’s motion.

Keller worked as a sales representative selling Yellow Pages advertising from 2003 until September 5, 2006, when he alleges he was constructively discharged. Keller has sued AT&T and Southwestern Bell Yellow Pages for retaliation under the Family Medical Leave Act (FMLA), retaliation and discrimination under the Age Discrimination and Employment Act (ADEA), tortious interference with contract, fraud, and breach of an oral employment contract.

In his deposition on July 19, 2007, Keller refused to provide answers to all questions about his employment subsequent to leaving AT&T (including whether he interviewed for or began subsequent employment during the “personal days” he took during his last week of

¹ The district court referred AT&T’s motion to this magistrate judge for resolution (Dkt. 32).

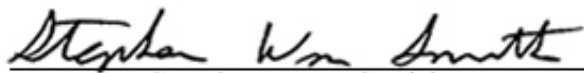
AT&T employment). This court has previously ruled (Dkt. 34) that information about Keller's post-AT&T employment is relevant to Keller's duty to mitigate his damages and is a proper subject of discovery in this case.

Keller argues that the motion to compel is moot because he attached to his response an affidavit answering all of the questions AT&T referred to in its motion. Keller asks that instead of requiring him to appear for a second deposition, AT&T be required to submit any further questions to him by interrogatory.

Keller appears to have made a good faith effort to answer AT&T's questions in his affidavit. Nonetheless, AT&T is entitled to cross-examination and follow-up on those questions in a deposition if it chooses. Because Keller's wrongful refusal to answer relevant questions has necessitated a second deposition, Keller shall bear the cost of a court reporter and videographer for the second deposition. AT&T's request for attorneys' fees for its motion and a second deposition is denied.

The deposition will be limited to the matters raised in AT&T's motion to compel, and will be limited to 2 hours of questioning by AT&T's counsel. AT&T may, if it chooses, forgo a second deposition and serve Keller with up to 10 additional interrogatories.

Signed at Houston, Texas on August 14, 2007.


Stephen Wm Smith
United States Magistrate Judge